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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/751,189	12/29/2000	Daniel B. Stewart	NTL-3.2.160/3597 (12740RO)	8529
34845	7590	08/09/2005	EXAMINER	
STEUBING AND MCGUINNESS & MANARAS LLP 125 NAGOG PARK ACTON, MA 01720			JACOBS, LASHONDA T	
			ART UNIT	PAPER NUMBER
			2157	

DATE MAILED: 08/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/751,189

Applicant(s)

STEWART ET AL.

Examiner

LaShonda T. Jacobs

Art Unit

2157

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 October 2004.
- 2a) ☐ This action is **FINAL**.      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-62 is/are pending in the application.
- 4a) Of the above claim(s) 5-18, 23-35, 37-44 and 46-62 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 19-22, 36 and 45 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Amendment***

This Office Action is in response to Applicants election to Restriction Requirement filed on October 6, 2004. Claims 1-4, 19-22, 36 and 45 have been elected and presented for examination.

### ***Claim Rejections - 35 USC § 101***

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim **45** is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claim **45** is not limited to tangible embodiment. Applicants fail to define what is a readable medium. As such, the claim is not limited to statutory subject matter and is therefore non-statutory.

MPEP 2106, IV.B1 (a) indicates that in order to enable performance of the steps on a computer, the article embodying the corresponding program should be characterized as a "computer-readable medium". As such, claim 45 would be considered statutory under 35 U.S.C. 101.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-4, 19-22, 36 and 45 are rejected under 35 U.S.C. 102(e) as being anticipated by Skene et al (hereinafter, “Skene”, U.S. Pub. 2001/0049741).

As per claims 1, 19, 36, and 45, Skene discloses a method, apparatus and readable medium, associated with a domain name system server, of controlling the transfer of information via a network, said method, apparatus and readable medium, comprising:

- receiving, from a client device, a request for a network address that is associated with a service (paragraph 0046);
- selecting a respective one of a plurality of network addresses each of which corresponds to a respective one of a plurality of servers that are available to provide said service (paragraphs 0047-0048 and 0050);
- transmitting, to said client device, said respective one of said plurality of network addresses so that said client device may transmit at least one service request associated with said service that is to be directed to said respective one of a plurality of network addresses (paragraphs 0047-0048 and 0050).

As per claims 2 and 20, Skene further discloses:

- receiving, from at least one further server, an indication that said further server is available to receive requests associated with said service (paragraph 0053); and

Art Unit: 2157

- incorporating said network address of said further server into said plurality of network addresses (paragraph 0053).

As per claims 3 and 21, Skene discloses wherein said indication includes at least one of:

- a network address of said further server, said service and authentication and non-repudiation information (paragraph 0053).

As per claims 4 and 22, Skene further discloses:

- transmitting, to a database, a request to determine whether said client device is associated with at least one quality of service level (paragraph 0097);
- receiving, from said database, a response to said request (paragraph 0093); and
- selecting said respective one said plurality of network addresses based on said response (paragraph 0093).

### *Conclusion*

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Pub. No. 2001/0047415 to Skene et al

U.S. Pub. No. 2002/0040400 to Masters

U.S. Pat. No. 6,470,389 to Chung et al

U.S. Pat. No. 6,092,178 to Jindal et al

U.S. Pat. No. 6,446,108 to Rosenberg et al

U.S. Pat. No. 6,449,647 to Colby et al

Art Unit: 2157

U.S. Pat. No. 6,324,582 to Sridhar et al

U.S. Pat. No. 6,574,229 to Takahashi et al

U.S. Pat. No. 6,249,801 to Zisapel et al

U.S. Pat. No. 6,108,703 to Leighton et al

U.S. Pat. No. 6,590,861 to Vepa et al

U.S. Pat. No. 6,205,477 to Johnson et al

U.S. Pat. No. 6,324,580 to Jindal et al

U.S. Pat. No. 6,553,420 to Karger et al

U.S. Pat. No. 6,317,775 to Coile et al

U.S. Pat. No. 6,185,619 to Joffe et al

U.S. Pat. No. 6,314,465 to Paul et al

U.S. Pat. No. 5,740,371 to Wallis

U.S. Pat. No. 5,774,660 to Brendel et al

U.S. Pat. No. 6,173,322 to Hu

U.S. Pat. No. 6,134,588 to Guenthner et al

U.S. Pat. No. 6,446,121 to Shah et al

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LaShonda T. Jacobs whose telephone number is 571-272-4004.

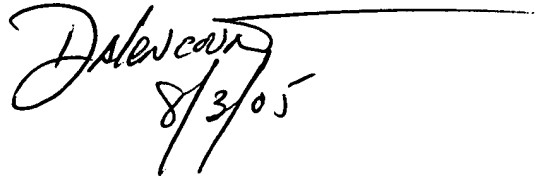
The examiner can normally be reached on 8:30 A.M.-5:00 P.M..

Art Unit: 2157

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on 571-272-4001. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

LaShonda T Jacobs  
Examiner  
Art Unit 2157

A handwritten signature in dark ink, appearing to read 'LaShonda T Jacobs', with a horizontal line extending to the right. Below the signature, the date '8/3/05' is handwritten.

ltj  
July 27, 2005